

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

WHITEWOOD, *et al.*,

Plaintiffs,

v.

WOLF, *et al.*,

Defendants.

Civil Action

Case No. 13-cv-01861-JEJ

**BRIEF IN SUPPORT OF MOTION OF PENNSYLVANIA
LEGISLATORS FOR LEAVE TO APPEAR AS *AMICI
CURIAE***

Amici curiae the Honorable Matthew E. Baker, the Honorable Paul I. Clymer, the Honorable Jerry A. Stern, the Honorable Jerry Birmelin, the Honorable Allan Egolf, the Honorable Dennis E. Leh, the Honorable Samuel E. Rohrer, and the Honorable Thomas F. Yewcic, pursuant to Federal Rule of Appellate Procedure 29(b), move this Court for an order granting leave to participate as *amici curiae* in the above-captioned case in support of the constitutionality of the Defense of Marriage Act (DOMA). *Amici* sought concurrence with counsel for all parties

pursuant to Local Rule 7.1 and as of filing, concurrence was not received.

I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

As now-Justice Alito explained in *Neonatology Associates, P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002), the Court has broad discretion to permit third parties to participate in an action as amicus curiae. In the words of Justice Alito, “our court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet [FRAP] Rule 29’s criteria as broadly interpreted.” *Id.* Rule 29(b) requires a statement of the movant’s interest and why the brief is desirable and relevant to the court’s deliberations. Both of these criteria are described below.

II. STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici are Pennsylvania legislators who voted for the Pennsylvania Defense of Marriage Act in 1996. The Honorable Matthew E. Baker, the Honorable Paul I. Clymer, the Honorable

Jerry A. Stern, the Honorable Jerry Birmelin, the Honorable Allan Egolf, the Honorable Dennis E. Leh, the Honorable Samuel E. Rohrer, and the Honorable Thomas F. Yewcic, respectively. *Amici* voted for the act out of concern that a court may otherwise redefine the law. In doing so, they merely maintained the status quo by making the definition of marriage, contained in caselaw and practice, explicit in statute. They write to express their interest that the will of the General Assembly be upheld.

III. AMICI CURIAE'S BACKGROUND IS DESIRABLE AND RELEVANT TO THIS COURT

Amici seek not only to uphold the will of the Legislature in passing DOMA but to provide information to this Court that explains the state interests behind gendered marriage.

IV. CONCLUSION

Pennsylvania legislators, The Honorable Matthew E. Baker, the Honorable Paul I. Clymer, the Honorable Jerry A. Stern, the Honorable Jerry Birmelin, the Honorable Allan Egolf, the Honorable Dennis E. Leh, the Honorable Samuel E. Rohrer, and the Honorable Thomas F. Yewcic request this Court's leave to

submit an amici brief in support of the constitutionality of the
Defense of Marriage Act.

Respectfully submitted,

/s/ Randall L. Wenger

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2014, that I caused the foregoing Brief in Support of Motion of Pennsylvania Legislators for Leave to Appear as *Amici Curiae* to be served on all counsel via the Court's CM/ECF system.

/s/ Randall L. Wenger
Randall L. Wenger